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ABSTRACT

This booklet is designed to help mid-life and older women examine the issues particularly related to late-life divorce; undertake the necessary financial and legal tasks associated with divorce; and accept and work through the range of powerful emotions that typically occur as a result of divorce. It is not intended to provide advice or counseling and readers are encouraged to seek professional guidance to help resolve divorce issues in the reader's best interest. These topics are discussed: (1) examining options in a troubled marriage and deciding to divorce; (2) the steps involved before beginning the legal divorce process; (3) meeting the legal requirements of divorce, including obtaining legal help, using divorce mediation, the divorce settlement, and types of assets; (4) completing the emotional divorce, noting that "emotional" divorce may or may not coincide with the timing of "legal divorce"; (5) seeking therapeutic intervention; and (6) taking responsibility for oneself. The booklet concludes that although most divorces occur within the first 7 years of marriage, divorce of middle-aged and older couples is increasing and statistics suggest that it will continue to rise. The appendix lists relevant organizations and a bibliography of resources. (ABL)

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Challenges and Choices

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DIVORCE AFTER 50

Challenges and Choices

This publication was developed under the auspices of AARP's
Women's Initiative.

Social Outreach and Support Section • Program Department
American Association of Retired Persons



The Women's Initiative is the major effort of the American Association of Retired Persons to strengthen and enlarge the leadership roles held by women; to address the special health, financial, and social needs of middle life and older women; to create additional opportunities for women to realize their full potential; and to focus attention on the contributions women are making to society.

To find out how you can get involved, or to request any of our publications, write:



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Contents

Introduction	5
Deciding to Divorce	6
If You Decide to Divorce	7
Meeting the Legal Requirements of Divorce	9
Obtaining Legal Help	9
Using Divorce Mediation	11
The Divorce Settlement	13
Completing the Emotional Divorce	17
Seeking Therapeutic Intervention	19
Taking Responsibility for Yourself	21
Conclusion	22
Appendix	23
Organizations	23
Bibliography	24

Introduction

Divorce, at any age, is a stressful life event. For mid-life and older women, the transition from married to single life can be particularly difficult. The traditional roles and values many women were socialized to accept are shattered by divorce. Expecting to remain married until "death do us part," many are unprepared for lives as divorced single people.

After years of marriage, many women understandably express concern about creating new lives for themselves. The first steps toward single life include difficult emotional, financial, and legal decisions which many mid-life and older women have little, or no, experience making. Divorce for these women may be further complicated by the following:

- On the national average, women emerge from divorce with a decrease in their standard of living based on income. This reality is particularly difficult for mid-life and older women as many have little if any experience working outside the home, limiting their employment options.
- For older women, particularly those whose spouses were the primary breadwinners, negotiating a divorce settlement is complicated by such issues as their rights to pension, social security and life insurance benefits; and health insurance coverage.
- As women age their opportunities to remarry diminish.

This booklet is designed to help mid-life and older women:

- Examine the issues particularly related to late-life divorce;
- Undertake the necessary financial and legal tasks associated with divorce; and
- Accept and work through the range of powerful emotions that typically occur as a result of divorce.

This booklet is not intended to provide advice or counseling. Throughout, you are encouraged to seek professional guidance to help you resolve your divorce issues in your best interest.

Deciding to Divorce

You may be considering divorce because it appears to be the only solution to seemingly insoluble problems in your marriage. If possible, you should take time to examine all of the issues before deciding if divorce is your only realistic option.

In some instances, a marriage can be maintained depending on the problems. Some problems, such as those related to aging (i.e., adjusting to retirement and loss of parent role) and drug or alcohol dependency, may be resolved with the help of mental health professionals. Also, be aware that some medical conditions can alter a person's psychological and emotional state. Sometimes such changes can be corrected by proper medical care.

Of course, if your spouse will not explore such issues with you, or if you fear for your immediate emotional and/or physical well-being, such considerations may not be relevant to your situation.

In addition to the above issues, you should examine your financial situation and weigh it carefully in your decision.

If You Decide to Divorce

If you have decided to divorce, you may want to consider taking the following steps before actually beginning the legal divorce process. These tasks may seem frustrating and time consuming. However, completing them may help you feel more in control of your future—and your divorce.

- Start saving money. You will need it to pay for legal counsel. Also, once the divorce process begins your spouse may not continue contributing to, or providing for, your support.
- Open a checking and/or savings account in your own name if you have not already done so. This will enable you to manage and have sole control of your money.
- If you have not already established your own credit, begin by obtaining a gas, store or major credit card in your own name.
- Keep a record of personal expenses. In addition, keep an accurate record of the normal household expenses. This will help resolve any discrepancies that may surface when negotiating your settlement.
- Gather as much information as possible about your and your spouse's financial situation. You will need this information to negotiate a settlement. Collect your family's financial papers such as wills, life insurance policies, mortgage deed, car and/or other loan documents, credit card agreements, pension and investment information, checking and savings statements for the past three years, and a list of the contents of your bank security box.

Make photocopies of all of these documents if you are unable to retain the originals. In addition, make a list of your and your spouse's financial advisors.

Organize this information by making separate folders for assets, liabilities, monthly expenses and monthly income. Assets include cash; money owed you; securities; investments and other business participations; tangible personal property; real estate; and intangible personal property (i.e., pensions, life insurance, etc.). Liabilities include current unpaid bills; installment debts on cars, etc.; loans from individuals; mortgages; and trusts. Monthly expenses include payments for mortgage or rent, gas, electricity, water, food, car maintenance, vacations, etc. Monthly income is based on your and your spouse's, or just your, current income from employment, pensions, social security, etc.

Find out the current legal, financial and tax aspects of divorce. You should be able to get books and other resources containing this information at your local library or bookstore.

Learn about divorce mediation. It allows you and your spouse to develop your own settlement with the help of a neutral third party, a mediator. You may want to consider using it in conjunction with attorney representation. (See "Hot Flash," Bibliography.)

Once you have completed these tasks, you will be better prepared to meet with an attorney to discuss how to proceed with the divorce. One caution—if you are planning to move out of your home, consult with an attorney before leaving your home and spouse (and children) to avoid possible charges of desertion.

Meeting the Legal Requirements of Divorce

Obtaining Legal Help

Good legal counsel is essential. This is already a difficult time in your life and it need not be made more difficult by doubts about your legal representation. Qualified legal counsel is readily available and is well worth the peace of mind you'll have knowing the legal aspects of your divorce are being properly handled.

You'll want to choose an attorney who:

- Has experience in matrimonial law;
- Is familiar with the current pension, retirement and tax issues relevant to late-life divorces;
- Is within your budget;
- Is sympathetic to your values;
- Is capable of negotiating with your spouse's attorney, but able to litigate in court if necessary; and
- Would be comfortable advising you if you also decide to seek divorce mediation.

You may want to use an attorney you have used for other legal matters. If that attorney is unfamiliar with matrimonial law, you can ask for referrals. Other methods of locating qualified legal counsel include:

- Asking for referrals from recently divorced friends;
- Contacting a lawyer referral service;
- Asking organizations or unions of which you are a member if they offer legal services; and
- Contacting your local legal services organization for public legal assistance.

Ideally, you'll want to interview two or three attorneys before hiring one. Before these interviews, find out if there is a fee, and how much it is, for initial consultation. Ask what information or documents would be helpful for you to bring to the consultation. Be sure to take your information and/or documents with you at the conclusion of the meeting. Do not leave them with the attorney.

To help you decide which attorney will best represent you, you will probably want to ask each attorney about:

Fees: Find out if the attorney charges a retainer fee (a base fee for the attorney's services). If possible, get estimates for the costs of settling out of court and/or going to trial. Don't be afraid to negotiate hourly charges.

Billing: Get information, in writing, about billing procedures and your payment terms.

Settlement strategies: Ask how the attorney will proceed to finalize your divorce. Find out what percentages of the attorney's cases were settled in, and out of, court.

References: Ask for client references. Specifically, ask for references from older women. Contact these references and discuss their satisfaction with the attorney's service.

Attitude toward mediation: Find out if the attorney would be comfortable acting as an advisor if you seek divorce mediation.

To ensure that your legal representation is in your best interest, you may want to consider the following cautions:

- Avoid "economy" methods such as buying a "do it yourself" divorce kit or sharing the same attorney with your spouse.
- Avoid using an attorney who is a family friend or a business associate of your spouse. Objective representation on your behalf may be compromised by conflicts of interest and emotional involvement by the attorney.
- Avoid using your attorney as a therapist. Your money will be better spent if you consult with your attorney on legal issues only. Contact a mental health professional if you feel counseling would be helpful. (See *Issues for Action*, Bibliography.)

Once you have hired an attorney, that attorney will register with the court as your attorney of record. This means that the attorney is obligated, by law, to serve as your advocate, even if you have disagreements about service/and or payment.

Your attorney may not drop you as a client except under very limited circumstances; in which case the attorney must petition the court to do so. However, if you are dissatisfied with your attorney's service, you are free to end your relationship. If you change attorneys, your former attorney is legally required to transfer all of your case information to the new attorney of record in a timely and orderly fashion.

No-fault Divorce

Most states now have provisions for "no-fault" divorce which can be utilized when both spouses agree upon, and do not hold the other responsible for, the dissolution of the marriage. Valid grounds for no-fault divorce differ from state to state, but in general they include:

- Marital incompatibility, also known as irreconcilable differences or irretrievable breakdown.
- Voluntary separation; living separately for a prescribed period of time.
- A prior decree of legal separation; a court-declared legal separation for a prescribed period which automatically converts to a divorce decree.

You'll want to discuss with your attorney all of the divorce options available in your state. You may find that a no-fault divorce, if available, is not in your best interest depending on the reasons for your divorce.

Using Divorce Mediation

Divorce mediation is a process in which you and your spouse work out your own divorce settlement with the aid of a neutral party, the mediator. Divorce mediation is recommended for couples who want

to end their marriage in a cooperative manner. It allows you and your spouse to maintain control of the process and product of your settlement and helps you resolve your differences without becoming adversaries. You can use mediation to settle all or portions of your divorce agreement.

Divorce mediation is not recommended for couples when one or both spouses suffer from severe mental incapacity; fear physical, verbal or emotional abuse from the other; or are uncompromising in their approach to problem solving.

A divorce mediator will help you and your spouse:

- Identify your needs and rights;
- Define the issues to be resolved;
- Balance your respective bargaining positions;
- Develop creative solutions to what seem to be intractable disagreements; and
- Sensitively negotiate settlement of emotionally-laden disputes.

You should choose a mediator with the same care you select your attorney. Together, you and your spouse should interview several mediators. Choose a mediator you feel can help you reach a settlement that is fair and reflects your values. Ask for, and talk with, client references.

Mediators come from a variety of professions, including the legal, clinical and educational areas. Regardless of their backgrounds, mediators should:

- Have knowledge of family law;
- Know the tax and other financial implications related to divorce settlements;
- Understand the emotional issues related to divorce; and
- Be trained in communication and negotiation skills.

During the mediation process, both your and your spouse's attorneys should be actively involved and review draft agreements. When an acceptable agreement is reached, it is signed by you and your spouse and is incorporated into the final divorce settlement.

Several states now provide court-sponsored or court-connected mediation services which generally are free of charge. Many communities have dispute resolution centers, sometimes called neighborhood justice centers, which also offer mediation services. Private divorce mediators can be located through the Academy of Family Mediators' national referral service. (See Organizations, Appendix.)

The Divorce Settlement

The rules for determining the grounds for divorce and for awarding property, alimony and child support have changed dramatically during the past 10 years.

The major legal issues to be resolved during divorce are usually financial. They can include:

- Dividing the property or assets; known as the property settlement.
- Determining a fair and adequate post-divorce income for the spouse who has been supported primarily by the other spouse; usually referred to as alimony.
- Determining who will be responsible for the care of minor children, where the children will live, and the amount and method of child support payment.

Currently, there is no clear definition of marital property. In the past, it was defined primarily in terms of tangible assets such as cars, homes, and investments. Today, however, there is a trend toward expanding the definition to include many intangible assets such as life insurance policies, pensions and other retirement benefits. For older couples, such intangibles are likely to be their most valuable assets.

Before agreeing on a settlement, you'll want to discuss the possible tax implications associated with the distribution of your assets with your attorney. Your assets can include:

The family home. The home is an important asset providing you with shelter, equity and potential income and credit. In the past, women were generally awarded the home. Today, the trend is for the court to order the home to be sold and the proceeds divided. Before agreeing to any trade-offs that may be offered by your spouse, such as relinquishing your interest in other assets (retirement benefits, etc.) in order to keep the home, discuss the liabilities of such trade-offs with your attorney. (See *Issues for Action*, Bibliography.)

Pensions and retirement benefits. Recent legislation makes it more likely that if you or spouse were members of pension plans during your marriage, all or part of their value may be considered joint property and hence divisible. This new law also allows courts to award survivor's benefits of pensions to parties involved in divorce. Your rights after divorce usually depend on what the two of you negotiate as part of your property settlement or what the court awards you. The new law does not cover railroad or military pensions. (See "Women's Guide to Pension Rights," Bibliography.)

Social Security. If you are divorcing a spouse who has worked under social security, you may be eligible for retirement or survivor's benefits as a former spouse. You become eligible by meeting the social security requirements and making an application at your local social security office. No court order is necessary. In some cases, you may be able to start collecting benefits as a divorced spouse even before the worker retires. Contact your local Social Security Administration office for eligibility guidelines (See *Divorce: Citizens' Legal Manual*, Bibliography.)

Health insurance. You may want to include provisions for health insurance in your divorce settlement. A law, which became effective July 1, 1986, allows you to maintain your health insurance coverage for three years through your spouse's employer. Although you are responsible for paying the full premium plus a small administrative

cost, continued group coverage is generally less expensive than individual coverage. As your coverage will be terminated if the premiums are not paid, you may want to pay the premiums yourself and get reimbursed by your spouse.

To continue your coverage through your spouse's employer, you must notify the health plan immediately of your change in marital status. Within two weeks, the plan must notify you of your right to continue coverage. You must respond within 60 days if you wish to continue the plan. (See "Group Health Insurance Continuance," Bibliography.)

Educational degrees or professional licenses. Some states have begun to include educational degrees or professional licenses as part of a couple's marital property. Such consideration may be given particularly if you, expecting to share in the benefits of such an investment, supported your spouse while he was obtaining the degree or license. (See *The Divorce Revolution*, Bibliography.)

Goodwill value of business or profession. If you have supported or helped your spouse establish a business, you may be entitled to a portion of expected profits.

Life and disability insurance. A life insurance policy can be transferred from one spouse to the other or can be cashed if the policy has a cash surrender value. It should be considered as part of your family's marital property. (See *Divorce: Citizens' Legal Manual*, Bibliography.)

Household property. Make a list of what you and your spouse own and the value of each major item. You probably will want to divide this property according to practical use and sentimental value. However, be sure to consider the monetary value of this property as related to your property settlement.

Debts. Be sure your property settlement includes provisions for paying your family's debts. To make the settlement equitable, consider the incomes available to you and your spouse when deciding who should pay which debts.

Alimony is awarded at the discretion of the court on the basis of need and ability to pay. In the past, it was awarded to the "innocent" party, usually the woman, for life or at least until remarriage. Today, alimony is rarely awarded and is generally thought of as a rehabilitative tool to help women make the transition to economic independence. For mid-life and older women who have had little or no experience working outside the home, such provisional support may not be adequate.

You may want to explore with your attorney or mediator some of these alternative purposes and justifications for alimony:

- Delayed compensation; for sacrifices in your earning potential as the result of assuming the homemaker role in your marriage.
- Lost opportunity cost; calculated on the basis of what you could be earning in the occupation you left to assume a homemaking role.
- Division of marital property; considering the future earning capacity of the working spouse as a partnership asset developed through the efforts of both spouses. As such, the post-marital income would be characterized as marital property. (See *Issues for Action*, Bibliography.)

Because a working spouse's future income is often of greater value than the couple's marital property, alimony, unlike property settlements, can be modified should circumstances warrant.

Child support may not appear to be a divorce settlement issue for older women. However, if you have young adult children you may need to address the issue of who will pay for post-high school education (college, trade school, etc.). Keep in mind that many states have lowered the age of majority to 18 and the courts will not order support after that age.

Completing the Emotional Divorce

Your "emotional" divorce may or may not coincide with the timing of your "legal" divorce. For most people, the emotional transition takes two to five years. Mourning the loss of your marital partner, familiar patterns, and future expectations, is normal. Acknowledging such feelings may, in fact, mark the beginning of your adjustment to divorce.

You will probably experience a great deal of stress resulting in a series of strong emotions as you adjust to your new life as a single woman. For the majority of divorcing women, this stress is not debilitating or all-encompassing.

For some, however, the stress of divorce is compounded by age-related life changes such as declining health; loss of primary role as a parent; increased care of an older infirm parent or in-law; or a substantial drop in family income as a result of retirement. The combined stresses of divorce and one or more of these experiences can often produce medical complications.

You may feel you are on an emotional roller coaster. At times, your emotions may be so intense and unsettling that you think you are crazy. You are not. You are experiencing normal reactions to the losses and readjustments inherent in divorce.

The length of time you experience such emotions and how long you take to adjust to your divorce depends on a number of factors such as:

- Who initiated the divorce.
- How attached you are to your spouse, both emotionally and financially.
- The number of roles you assumed during your marriage and the number of roles you perceive to be available to you now.
- Your degree of self-worth.
- The external pressures you had to deal with during your divorce.
- Your emotional state prior to your divorce.

The range of emotions you may experience include:

Humiliation; feeling degraded for being "divorced."

Sense of loss; a need to grieve for the loss of your spouse and marriage.

Disbelief; an inability to accept your marriage is over.

Desperation; attempting to negotiate and save your marriage.

Depression; a sense of failure and sadness as you accept the impossibility of saving your marriage.

Ambivalence; feeling a sense of loss and relief at the same time.

Anger and hostility; at your spouse, society, professionals who could not "save your marriage," and/or your children for "taking sides" and for "letting" this happen to you. You may have a desire to hurt and seek revenge.

Guilt; feeling responsible for causing the breakup, hurting your spouse, children and/or in-laws.

Euphoria; relief and renewed energy as the result of ending a painful and/or debilitating relationship.

Withdrawal and numbness; being overwhelmed by emotions and life style changes, functioning on "automatic pilot" while you adjust.

Disorientation; a sense of not knowing who you are or what your future holds.

Desire to run or escape; to stop being responsible for yourself and others.

Desire to make decisions quickly; regardless of their wisdom, to show yourself and others you are "in charge."

Anxiety; fear and panic about not being able to "make it on your own."

Remember, such feelings are a normal part of your emotional adjustment to your divorce. You may want to consider the following suggestions:

- Do not rush your emotions. Rushing, or denying, any of your feelings, no matter how unsettling they are, can delay your emotional adjustment.
- Resist making major decisions until you feel more in control of your emotions. Now is not the time to sell your house or marry someone you have just met. Such decisions, made in haste to avoid the pain of loss, can be more harmful than helpful in the long run.
- Do not judge yourself harshly; you are experiencing one of life's major stresses. You may make mistakes judging your needs and how to meet them. Learn from your mistakes and move on.
- Let your friends help you by allowing them to share your anger, pain and laughter about your situation.
- Do not be afraid to seek mental health counseling; whether it is short-term to help you through your grief, or long-term to help you deal with drug or alcohol dependency or other problems.

Seeking Therapeutic Intervention

Therapeutic intervention from doctors, religious advisors, mental health counselors or social service agencies may seem frightening, socially disgraceful or embarrassing. However, counseling may make it easier for you to adjust to your divorce and may speed your transition to a productive life as a single person.

If you experience any of the signs of depression, such as prolonged sleeplessness, nervousness, lack of appetite, feelings of despondency, or if you find yourself becoming addicted to alcohol or other drugs, therapeutic intervention is not only helpful, but recommended.

There are a variety of counseling approaches available including groups led by counselors, intensive individual therapy, short-term task-specific counseling, or long-term analysis. If you decide to seek counseling, you'll probably want to interview two or three counselors before deciding which one to use. You may want to get referrals for counselors from your friends, clergy, doctor or the local mental health association. When you interview a counselor, you will want to find out about his or her training, credentials, length of time in practice and preferred method of treatment. Other questions you may want to ask include:

- Has he or she dealt with women your age experiencing divorce?
- What is the policy regarding cancelled sessions and vacation periods?
- Is he or she licensed to sign your insurance forms?
- Do you think he or she might pressure you to take tranquilizers or other drugs, which can be more harmful than helpful, to calm down or cope?
- In the event medication is really needed, is he or she affiliated with a hospital or a medical doctor?

If the answers to these questions are satisfactory, ask yourself if you think you can share your feelings with this person. Do you feel comfortable with him or her? If not, interview others.

Taking Responsibility for Yourself

Take care of yourself. Your sound physical and emotional well-being is important and can help ease your adjustment to your new life. You will be able to deal more effectively with such tasks as financial or career planning if your physical and emotional health needs have been met. Now is not the time to neglect yourself.

- Maintain your health. Arrange for annual physical, eye, foot and dental check-ups.
- Keep physically active.
- Broaden your network of friends; include people who will help you during a crisis as well as share your happiness.
- Establish and maintain some degree of structure in your life. A job or volunteer work can provide some of this.
- Take the initiative in planning activities with friends. What you plan is not as important as the fact you have done the planning.
- Create opportunities to do something for others.
- Plan a vacation or an educational experience.
- Identify and avoid activities and situations that increase your sense of isolation.
- Work out a plan for emergencies.
- Bolster your self-esteem by making a list of your assets and reading it daily, if necessary.
- Be sure not to neglect your appearance.
- Brush up on old skills and pursue new interests.
- Join or start a support group of women who are also experiencing divorce late in life; it may help you feel less isolated.

Pamper yourself; you deserve it. (See *Single Parent*, Bibliography.)

Conclusion

Most divorces occur within the first seven years of marriage. However, divorce of middle-aged and older couples is increasing and statistics indicate it will continue to rise.

Divorce at any age is traumatic. You may be so overwhelmed by conflicting emotions about your divorce it seems hard to believe life can, and will, get better. This is normal. You are experiencing one of the most stressful of life's events; forcing you to make emotional and lifestyle changes you probably never anticipated.

Your marriage has ended, but your life as a single person is just beginning. As you work through the process of reordering your life, you will likely find new strengths and a new sense of independence. Creating a new life for yourself will not be easy, but it can be done. Eventually, your life may be exciting and fulfilling as *you* take control of *your* situation.

You will likely have a number of questions and concerns about divorce that were not addressed in this booklet. The Organizations list and Bibliography, which follow, in addition to your legal, financial and mental health professionals, may help you get the information you need.

Appendix

Organizations

AARP Worker Equity Department. AARP, 1909 K St, N.W., Wash. DC 20049, information about work options.

Academy of Family Mediators. P.O. Box 10501, Eugene, OR 97440. For a listing of private divorce mediators in your area.

The American Council of Life Insurance. 1001 Pennsylvania Ave., N.W., Washington, DC 20004. For information about life insurance.

Displaced Homemakers Network. 1411 K St., N.W., Ste. 930, Washington, DC 20005. For information about entering or reentering the job market.

Institute of Certified Financial Planners. Two Denver Highlands, 10065 East Harvard Ave., Ste. 320, Denver, CO 80231. For a listing of financial planners in your area and a free brochure on selecting a financial planner.

Money Management Institute. Household Financial Services, 2700 Sanders Rd., Prospect Heights, IL 60070. For information about money management.

National Center on Women and Family Law. 799 Broadway St., Rm. 402, New York, NY 10003. For details on divorce laws.

Older Women's League. 730 11th St., N.W., Ste. 300, Washington, DC 20001. For information about group health insurance continuation and late-life divorce.

The Pension Rights Center. 918 16th St., N.W., Ste. 704, Washington, DC 20006. For information from the national clearinghouse on pensions and divorce.

Wider Opportunities for Women. 1325 G St., N.W., Washington, DC 20005. For general information about seeking employment.

Women's Equity Action League. 1250 I St., N.W., Washington, DC 20005. Information for former military spouses and information about financial aid for education.

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